

PETER SZANTO 503-610-0865
P.O. Box 4614
Portland OR 97208

BANKRUPTCY COURT
DISTRICT OF OREGON

2017 MAR 21 AM 10:04

United States Bankruptcy Court

in and for the District of OREGON

1001 SW 5th Av., Portland OR 97204

Adversarial # 16-ap-3114

core case:16-bk-33185-pcm11

In Re Peter Szanto, Debtor

=====

Peter Szanto, Plaintiff

vs.

Evye Szanto, et al,

Defendants

Plaintiff's Notice of Motions and
Motion to Dismiss or Alternately,
Motion to Strike-out Defendants'
Counterclaims

Judge McKittrick – Courtroom #1

To the defendants, please take notice, plaintiff / debtor Peter Szanto,
herewith and hereby makes motion to **Dismiss** or alternately – makes
motion to Strike-out Defendants' Counterclaims.

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2 **1. Plaintiff's Certification Relating to Pre-filing Conferral**
3 **(Certification Pursuant to LBR 7007-1(a))**
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5 In regard of conferral as to the motion herein – Mr. Henderson is
6 listed as counsel for defendants in this adversarial proceeding. The
7 following statements are true:
8

9 On 3-7-17 at 1012AM, I called Mr. Henderson. We discussed
10 numerous topics related to the case. Mr. Henderson focused on explaining
11 to me all attorneys' right to tape record /digitally to record – without any
12 need for permission -- any conversation to which they are party. While Mr.
13 Henderson was listing citations to Oregon law which guaranteed his right to
14 record our conversation, I stated that I would seek to dismiss / strike those
15 counterclaims which he had inserted in his answer rather than plead in a
16 separate document. Mr. Henderson stated: "I don't care."
17

18 Therefore, pursuant to LBR 7007-1(a)(1)(A) the following is true:

19 (A) "The parties made a good-faith effort to resolve the
20 dispute and have been unable to do so. . . .
21

22 I certify under penalty of perjury under the laws of the United
23 States, that foregoing is true and correct. Signed at Burns, OR.

24 DATED 3-18-2017  Peter Szanto
25

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2. Essential Facts

Defendants' answer (DE 66 at pp. 19-20) pleads the following counterclaims:

- 1) **1st Counterclaim requests attorneys' fees.**
- 2) **2nd Counterclaim alleges that plaintiff has brought duplicate litigation against some of the defendants based on the similar actions as in his present claims without success. Allegedly, if the previous sentence is true, there would lie a defendants' claim, and award, based on meritless litigation**
- 3) **3rd Counterclaim – reasserts the 2nd counterclaim, but asks for relief that if defendants' prevail, plaintiff be required to obtain future pre-filing permission.**

Defendants' counterclaims all presuppose that defendants' will prevail in this litigation ---- and after prevailing, defendants ought to be rewarded in various ways.

For the various reasons explained in the instant Memorandum, all of these counterclaims fail and should be dismissed or stricken.

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2 **3. MEMORANDUM**

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4 **a. Grounds**

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6 FRCP 12(a)(1)(B) requires a party to respond to a counterclaim
7 within 21 days. Plaintiff responds within 21 days of the filing of (DE 66) on
8 March 6, 2017.

9

10 FRCP 12(a)(4) allows motions in lieu of a counter-answer.

11

12 FRCP 12(f) allows a motion to strike redundant, immaterial,
13 impertinent or scandalous materials.

14

15 FRCP 12(g) allows the joining in one motion of all matters brought
16 under rule FRCP 12.

17

18 FRCP 12(b)(1) requires dismissal when the court lack's subject
19 matter jurisdiction.

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21 FRCP 12(b)(6) requires dismissal for failure to state a claim upon
22 which relief can be granted.

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b. Lack of Jurisdiction

Defendants' 1st Counterclaim for attorneys' fees references the hypothetical proposition that defendants' will prevail in this case.

Defendants' make no claims for anything that has already happened which would warrant attorneys' fees. Likewise, defendants' fail to articulate which of plaintiff's claims has reciprocal fee provisions.

According to Article III of the Constitution, cases which do not involve "actual, ongoing controversies" are moot and must be dismissed for lack of jurisdiction. *Stotts v. Cmty. Unit Sch. Dist. No. 1*, (2000) 230 F.3rd 989. The issue of mootness arises when, as here, a counterclaimant seeks only prospective relief. *Rembert v. Sheahan*, (1995) 62 F.3d 937, 940.

Here, defendants' have plead only a hypothetical, future claim – if, and only if, they prevail in this case. Thereupon, this Court cannot create jurisdiction over the mere possibility that defendants may prevail.

c. Ashcroft Paradigm Applies to Defendants'

Failure to State a Claim

The 2nd Counterclaim makes vast and abstract reference to plaintiff doing other things, on other occasions to some of the defendants. Then, defendants' conclusorily sum this all up by saying that plaintiffs' claims are meritless (but, that type of oppositional rhetoric is what all

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2 defendants are expected to state in an answer). Thus the 2nd Counterclaim
3 fails – primarily -- because it is merely an extension of the answer.
4

5 Ultimately, what defeats defendants rambling 2nd Counterclaim
6 allegation is that the basic tenet that a court must accept as true all of the
7 allegations contained in a complaint is inapplicable to legal conclusions.
8 And that is all that defendants have presented -- conclusions without any
9 factual allegations supported by particulars. Defendants recitals of very
10 vague elements of possible misdeeds is unsupported by details. Likewise,
11 what is alleged are merely conclusory statements which do not suffice to
12 create any valid actionable causes of action. *Ashcroft v. Iqbal*, (2009) 556
13 U.S. 662.
14

15 Thus, the 2nd Counterclaim should be stricken for failure to state
16 any specific claim.
17

18
19 **d. Twombly Pattern Threadbare Allegations Fail to State a Claim**
20

21
22 Defendants' only assertion in their 3rd Counterclaim is that plaintiff
23 allegedly "engaged in a lengthy and abusive pattern of litigation." There
24 are no facts. There is no allegation of which century or even which country
25 such events may have occurred (if they occurred at all).
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2 "A plaintiff's obligation to provide the grounds of his entitle[ment] to
3 relief requires more than labels and conclusions, and a formulaic recitation
4 of the elements of a cause of action will not do." *Bell Atlantic Corp. v.*
5 *Twombly* (2007) 127 S. Ct. 1955, 1964-65.

6
7 Here, the 3rd Counterclaim's empty allegation of abuse should not be
8 permitted to survive demurrer, because that counterclaim fails the test of
9 providing even the vaguest facts upon which relief may be contemplated.

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11 Thereupon, defendants' vague abstractionism does not constitute
12 a claim upon which any relief may lie.

13
14 **e. Defendants' Counterclaims are Redundant, Immaterial,**
15 **Impertinent and Offer Scandalous Materials Which**
16 **Have Been Previously Withdrawn**
17

18
19 This case began on 9-21-16 (6 months ago). Defendants spent
20 most of that 6 months time presenting false allegations about plaintiff from
21 long ago. After a multitude of opportunities and requests for summary
22 judgment (and an incredible waste of this Court's and plaintiff's time and
23 resources) defendants' withdrew their lambasting averments and decided
24 to answer.

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2 Plaintiff would contend that once withdrawn, these matters about
3 other cases, from the past have already made their appearance and have
4 been resolved in this case (after numerous hearings, wasted time, wasted
5 money and defendants' ineffective attempts to articulate contentions from
6 the past).

7
8
9 In this case, defendants took six months to get around to pleading.
10 Public policy dictates that there be an end of litigation (here, at least, an
11 end to that part of litigation which attempts to deal with cases not before
12 this Court).

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14
15 When parties who have contested an issue seek to revive it – to
16 get a second bite at a cause of action --- they need be bound by the initial
17 result in this Court of having withdrawn their contentions. "Matters once
18 tried shall be considered forever settled as between the parties." *Baldwin*
19 *v. Traveling Men's Assn.*, (1931) 283 U.S. 522, 525.

20
21 Here, the parties wrestled the allegations of plaintiff's unspecified
22 misdeeds through numerous hearings and voluminous filings. It is
23 redundant, immaterial, impertinent and scandalous that defendants seek
24 to revive through the 2nd and 3rd counterclaims those false allegations
25 which they unsuccessfully thrashed before this Court for six months and

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2 finally withdrew.

3 This Court should not allow more opportunities for defendants to
4 waste additional time – and plaintiff’s meager finances -- on matters which
5 they themselves argued, reargued and then withdrew.

6
7 The 2nd and 3rd counterclaims should be stricken.

8
9 **4. CONCLUSION**

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11 Thereupon, the three counterclaims should be dismissed and / or
12 stricken.

13 Leave to file any amendment should be denied. Defendants have
14 demonstrated – through six months of filing papers which unsuccessfully
15 attacked plaintiff -- that defendants merely wish to parade before this Court
16 abstract, inchoate and tentative assertions. **Even if, all the alleged past**
17 **were fully exemplified -- no present claims for wrongdoing by plaintiff**
18 **have been alleged.**

19
20 **The Court should not allow any more wasted time on**
21 **irrelevant matters.**

22
23 **Most respectfully,**

24
25 Dated 3-18 /17 /s/  Peter Szanto

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2 **Proof of Service**

3 My name is Susan Bier, I am over 21 years of age and not a party
4 to the within action. My business address is PO Box 4614, Portland OR
5 97208. On the date indicated below, I personally served the within:
6

7 **Motion to Dismiss / Strike**

8
9 by e-mail to Mr. Olsen and Mr. Henderson at:

10 nhenderson@portlaw.com
11
12

13 I declare under penalty of perjury under the laws of the United States
14 that the foregoing is true and correct. Signed at Portland OR.

15 Dated 3-18-2017 __/s/ Susan Bier
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